IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO. 2 OF 2007

GOA FINANCIAL AND LEASING SERVICES LIMITED (GFLS) WITH EDC LIMITED ... Petitioner

Mr.Mahesh Sonak, Advocate for the Petitioner.

Mr. C. A. Ferreira, Assistant Solicitor General for the Central Government.

Coram:- N. A. BRITTO, J.

Date:- 30th March, 2007

P.C.:-

Heard Mr. M. S. Sonak, the learned Counsel on behalf of petitioner, Mr. C. A. Ferreira, the learned Assistant Solicitor General on behalf of the Central Government, the Official Liquidator in person and the Objector Mr. Dattaram V. Phadte who is working as Assistant Manager, in the Transferee Company i.e. EDC Limited.

On behalf of the Central Government, an objection has been taken stating that the Transferee Company has not filed a separate petition nor sought dispensation in respect of filing separate petition by the Transferee Company from this Court. Otherwise, the Central Government has no objection to the Scheme of Amalgamation. In answer to the said objection on behalf of the petitioner, reliance is placed on Mahaamba Investments Ltd. v. IDI Limited(2001 Company Cases (Vol.105) 16) wherein the objection has been dealt with by relying on two other decisions in Bank of India Ltd. v. Ahmedabad Manufacturing and Calico Printing Co.Ltd.((1972) 42 Company Cases 211) and that of the Delhi High Court in Sharat Hardware Industries P.Ltd.((1978) 48 Company Cases 23) stating that if a Scheme by way of undertaking does not affect the rights

of the members or creditors of the transferee-company, as between themselves and the company, or does not involve a reorganization of the share capital of the transferee-company, no application by the transferee-company under Section 391 or Section 394 would be necessary. The objection taken on behalf of the Central Government therefore needs to be rejected.

The next objection taken is by the Objector, the said Mr. Dattaram V. Phadte. As per him, one of the employees of the Transferor-M/s Goa Financial & Leasing Services Limited by name Joao P. Souza is already occupying the post of Deputy Manager in the Transferee Company-EDC Limited on deputation and in case the proposed amalgamation takes place the same will prejudiciously affect the other employees of the Transferee Company-EDC Limited including himself. On behalf of the Objector, it is also stated that he had filed Writ Petition No.370/2006 in which by Order dated 11-12-2006 of Division Bench of this Court had accepted the statement made on behalf of the Transferee Company-EDC Limited that they would be conducting a DPC for making a regular promotion to the post of Deputy Manager and the same would be done on or before 31-8-2007. On behalf of the Transferor Company, it is stated that the objection raised by the Objector, the said Mr. Phadte has no nexus with the Scheme of Amalgamation and as such is not maintainable. It is also stated that the Board of Directors of EDC Limited at its meeting held on 19-12-2006 while approving the Scheme of Amalgamation was appraised by the Managing Director that the two employees of the transferor Company-Goa Financial & Leasing Services Limited would be absorbed as a result of amalgamation and would be placed in a separate cadre so as not to affect the present staff of EDC Limited in any manner. The petitioner has denied that the proposed amalgamation will directly prejudice and affect the EDC employees including Mr. Dattaram V. Phadte. In my view, the objection taken on behalf of Mr. Phadte has no nexus with the Scheme of Amalgamation and it would be within the

province of the Transferee Company-EDC Limited as to how to deal with the employees of the Transferor Company after its amalgamation with the former. In any case a decision as regards the said employees of the Transferor Company has been taken. Those adversely affected by the said decision may choose to avail appropriate remedies against the same.

With the above observations, the objections taken have got to be rejected. The Official Liquidator as well as the Central Government have otherwise given their no objection to the proposed Scheme of Amalgamation. The Scheme of Amalgamation is therefore hereby accepted in terms of Minutes of Order filed. There shall be an Order in terms of the said Minutes. The said Minutes are marked "X" for identification.

N. A. BRITTO, J.

RD.